IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 496 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

LAKHABHAI RAMBHAI CHAUHAN

Versus

DIRECTOR

Appearance:

MR PJ KANABAR for Petitioners

MR UDAY BHATT A.G.P.for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 07/01/97

ORAL JUDGEMENT

Rule.

Heard the counsel for both the sides at length, and, therefore, I proceed to decide this petition finally.

2. The present petition is filed by the petitioners to challenge the order passed by respondent No.1, dated 27-7-95, by which he refused to issue a certificate in

favour of the petitioner No.2 that he belongs to Scheduled Tribe.

3. Admittedly the petitioner No.1 Lakhabhai Ramabhai Chauhan is an Adivasi Bhil. The State of Gujarat has recognized Adivasi Bhil community as a Scheduled Tribe. Admittedly the petitioner No.2 is not the genitive son of petitioner No.1. It is the claim of the petitioners that the petitioner No.1 and his wife have adopted the petitioner No.2 on 10th February, 1995 as per Hindu religious rites. Petitioner No.1 Lakhabhai Ramabhai Chauhan and his wife Savitaben are admittedly Adivasi Bhil by birth. It is the claim of the petitioners that as there is a valid and legal adoption of petitioner No.2 by petitioner No.1 and his wife, in view of the provisions of Section 12 of the Hindu Adoption and Maintenance Act, the petitioner Bavkubhai Lakhabhai Chauhan would also become an Adivasi Bhil. It is contended before me by the learned advocate for the petitioners that the District Court, Amreli has declared in a Civil Misc.Application No. 3 of 1995 that there is a valid adoption of petitioner No.2. The respondent No.2 was not justified in observing in his order while rejecting his application to issue certificate that there is valid and legal adoption of the petitioner No.2. But it is not at all necessary to go into controversy as to whether there was legal and valid adoption of the petitioner No.2 by petitioner No.1 for the purpose of finally deciding his petition. I will proceed by holding that there is a valid and legal adoption of the petitioner No.2 by petitioner No.1 and his wife and proceed to consider as to whether the petitioner No.2 is entitled to get the caste certificate as claimed by him.

4. Admittedly, the petitioner No.2 was not belonging to a Scheduled Tribe since his birth. He has been adopted at the age of 26. He belongs to Hindu Kathi Community which is not included in the category of Scheduled Tribe in Gujarat State. If the provisions of Article 15 (4) and 16 (4) are considered, then it would be quite clear that they are made for giving benefit to those persons who have suffered social and economic disabilities and who have become socially, culturally and educationally backward. The object of reservation is to remove these handicaps, disadvantages and suffering and restrictions to which the members of the Scheduled Tribes, Scheduled Caste or OBC were subjected to. Therefore, a person who had advantageous start in life on account of being born in a forward caste, merely because of his induction in the backward caste or community on account of adoption or marriage or conversion will not be eligible to the benefit of reservation either under

Article 15 (4) or 16 (4). Acquisition of status of Scheduled Tribe or Scheduled Tribe or OBC by voluntarily mobility into these categories would amount to playing fraud with Constituton and that would frustrate the Constitutional policy underlying under Article 15 (4) and 16 (4) of the Constitution. Therefore, a person born in a upper caste and having earlier advantage is not entitled to get the benefits of Article 15 (4). The petitioner in this case was not belonging to Scheduled Tribe community till his adoption and at that time he had attended the age of 26. Therefore, he cannot be permitted to take advantage of the provisions of Article 15 (4) or 16 (4) by transplanting himself on account of an adoption to Bhil Adivasi community. A similar question had come before the Andhra Pradesh High Court in the case of A.S.SAILAJA v. KURNOOL MEDICAL COLLEGE, A.I.R. 1986 ANDHRA PRADESH, 209 and the adoption of a girl by (Shepard) backward class person was not taken into consideration for giving her admission by giving the protection under Article 15 (4). In a recent case of MRS. VALSAMMA PAUL V. COCHIN UNIVERSITY AND OTHERS, 1996 (1),J.T 57 , the Appex Court has considered a question as to whether a lady married in a Scheduled Caste, Scheduled Tribe or OBC citizen, or transplanted by adoption or any other voluntary act, ipso facto becomes entitled to claim reservation under Article 15 (4) or 16 (4) and has held that as she is a member of forward caste, had advantageous start in life, she was not entitled to the facility of reservation. Thus, the case before me is fully covered by the said decision of the Apex Court. I, therefore, hold that even though the petitioner No.2 is properly and validly adopted by the petitioner No.1, he is not entitled to get caste certificate as claimed by him and consequently no relief as claimed in this petition could be granted in his favour.

I, therefore,hold that the present petition will have to be dismissed. I, accordingly dismiss the same with no order as to costs. Rule is discharged.

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